UNIVERSITY OF
TORONTO
FACULTY OF LAW

BORA LASKIN LAW LIBRARY
3 1761 06108631 0

Environmental Law

Volume 1

Fall 2008

Prof. D.N. Dewees

BORA LASKIN LAW LIBRARY

AUG 29 2008

FACULTY OF LAW
UNIVERSITY OF TORONTO

Environmental Law

Volume 1

Fall 2008

Prof. D.N. Dewees

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/environmentallaw01dewe_0

Introduction to Environmental Law
Fall, 2008
Table of Contents

Volume 1.

I. The Problem and Approaches

D. Boyd, Unnatural Law: Rethinking Canadian Environmental Law and Policy (Vancouver: UBC Press, 2003), Ch. 1: "Canada's Environmental Record" [6 pgs]....2

J. Simon, The Ultimate Resource, excerpts from chs. 16, 17. [8 pgs] 8

J. Brown, K. Green, S. Hansen and L. Fredricksen, "Environmental Indicators" 6th edn. (Vancouver: Fraser Institute, 2004) [pp. 10-12] [3 pgs]....16

Toronto Air Pollution Trends (1962-2000) [3 pgs] 19

Carbon Dioxide Trends (1750-2000; 1990-2100) [2 pgs]....22

"Physical Aspect of Pollution" [1 pg] 24

G. Hardin, "The Tragedy of the Commons" (1968) 162 Science 1243 [Excerpt 3 pgs]....25

R. Coase, The Firm, The Market, and The Law (Chicago: University of Chicago Press, 1988), Ch. 5: "The Problem of Social Cost" [pp. 95-104, 114-119] [7 pgs] 28

C. Stone, "Should Trees have Standing? – Towards Legal Rights for Natural Objects" (1972) 45 Southern Cal. L.R. 450 [Title page, pp. 458-481] [14 pgs] 35

P. Brown, "Are there any natural resources?" (2004) 23 Politics and the Life Sciences 1 [pp. 11-20] [10 pgs] 49

II. Common Law: Nuisance, Valuing the Environment and Class Actions

J. Benedickson, *Environmental Law (2d)* (Toronto: Irwin Law, 2002), Ch. 5: "Civil Liability for Environmental Harm" [8 pgs] 60

D. Dewees, "The efficiency of the common law: Sulphur dioxide emissions in Sudbury," (1992) 42 *University of Toronto L. J.* 1 [pp. 1-21.] [11 pgs]....68

British Columbia v. Canadian Forest Products Ltd., 2004 SCC 38 [Excerpts] [10 pgs]....79

Palmer v. Nova Scotia Forest Industries [1983] N.S.J. No. 534 [Excerpts] [5 pgs]....89

F. Ackerman and L. Heinzerling, *Priceless* (New York: The New Press, 2004) [pp. 153-165] [7 pgs]....94

Class Actions
Hollick v. Toronto (City) (2001), 42 C.E.L.R. (N.S.) 26 (S.C.C.) [10 pgs].....**101**

Pearson v. Inco Ltd. (2005), 18 C.P.C. (6th) 77 (Ont. C.A.) [10 pgs].....**111**

Pearson v. Inco Ltd. (2006), 2006 CarswellOnt 1527 (Ont. C.A. – additional reasons)[3 pgs]..**121**

Farming
Pyke v. Tri-Gro Enterprises Ltd. (1999) (Ont S.C. J.)[2 pgs].....**124**

III. Constitutional Jurisdiction

Theory
R. Revesz and R. Stavins, "Environmental Law and Policy" for A.M. Polinsky and S. Shavell, eds., *The Handbook of Law and Economics* (Amsterdam: North-Holland/Elsevier Science, 2004) [pp. 56-61] [6 pgs].....**130**

D. Esty, "Revitalizing Environmental Federalism" (1996) 95(3) Mich. L.R. 570 [Excerpts] [6 pgs] **136**

Federal/Provincial Relations
Harrison, "Federal-Provincial Relations and the Environment: Unilateralism, Collaboration and Rationalization" in D. VanNijnatten and R. Boardman, eds., *Canadian Environmental Policy: Context and Cases* (Toronto: Oxford University Press, 2001), pp. 123-135 [7 pgs].....**142**

R. v. Crown Zellerbach Canada Ltd. (1988), 49 D.L.R. (4th) 161 (S.C.C.) [pp. 161-63, 170-77, 184-89, 200-04] [15 pgs] **149**

R. v. Hydro Quebec (1997),151 D.L.R. (4th) 32 (S.C.C.) [pp. 32-36, 62-79, 97-99, 113-16] [18 pgs] **160**

Alberta Climate Change and Emissions Management Act, Chapter C-16.7 excerpts [3 pgs]....**174**

Elizabeth Atkinson, *The Legislative Authority to Establish a Domestic Emissions Trading System* (Ottawa: Renouf Publishing, 1999) [11 pgs].....**177**

Parliament, Standing Committee on Environment and Sustainable Development, "Constitutionality of Bill C-377, Climate Change Accountability Act" by P. Hogg (11 February 2008) [5 pgs].....**188**

Local Government
114957 Canada Ltee. v. Hudson (Town) (2001), 200 D.L.R. (4th) 419 [pp. 419-20, 433-39, 443] [10 pgs].....**193**

IV. Regulations: Cost Benefit Analysis and The Precautionary Principle

J. Benedickson, *Environmental Law (2d)* (Toronto: Irwin Law, 2002), Ch. 6: "Environmental Regulations and Approvals" [9 pgs]... .....**204**

K. Arrow, et al., "Is There a Role for Benefit-Cost Analysis in Environmental, Health, and Safety Regulation?" (1996) 272 Science 221 [2 pgs]..... **213**

F. Ackerman and L. Heinzerling, *Priceless* (New York: The New Press, 2004) "Myths and Markets," "$6.1m Question" [pp. 35-40; 66-75] [9 pgs]..... **215**

C. Sunstein, *Risk and Reason* (Cambridge: Cambridge University Press, 2002), Ch. 5: "Reducing Risks Rationally" [pp. 99-113, 120-132] [15 pgs]..... **224**

D. Dana, "A Behavioral Economic Defense of the Precautionary Principle" (2003) 97 NW. U.L.R. 1315 [pp.1315-1320, 1327-1335] [15 pgs]..... **239**

Appendix to Section IV: Statutory Excerpts

Ontario *Environmental Protection Act*, R.S.O. 1990, Chapter E. 19 (16 pgs)..... **256**
O. Reg. 419/05 Air pollution – Local air quality (3 pgs)..... **272**
O. Reg. 537/93 amended to 232/07 Effluent Monitoring and Effluent Limits – Petroleum Sector (3 pgs)..... **275**
Ontario Water Resources Act, R.S.O. 1990, Chapter O. 40 (6 pgs)..... **278**
Fisheries Act R. S. c. F-14 (3 pgs)..... **284**
Canadian Environmental Protection Act, 1999, c. 33 (9 pgs)..... **287**

V. Enforcement, Prosecutions, Administrative Penalties

ECO, *Annual Report 2000/01*, [p. 73-79] [10 pgs] **298**

ECO, Special Report, *Doing Less with Less*, 2007 [pp. 6, 7; 11-15; 17; 39-41] [10 pgs] **307**

Fletcher v. Kingston (City) 2004 CarswellOnt 1860 (Ont. C.A.) [13 pgs] **321**

R. v. Inco (2001), 54 O.R. (3d) 495 [12 pgs]..... **334**

R. v. Imperial Oil (2000), 36 C.E.L.R. (N.S.) 109 (B.C.C.A.) [6 pgs]..... **345**

R. v. Bata Industries Ltd. (1992), 9 O.R.(3d) 329 (Prov. Div.) [8 pgs]..... **351**

R. v. Bata Industries Ltd (1995), 25 O.R. (3d) 321 (C.A.) [1 pg] **359**

J. Benedickson, *Environmental Law (2d)* (Toronto: Irwin Law, 2002), Ch. 7: "Administrative Compliance Mechanisms" [8pgs]..... **360**

Environmental Penalties: Procedure for Calculating Monetary Benefit, MOE, May, 2007. [pp. 1, 2, 10, 11] [4 pgs] See also EPA sections 182.1, 182.2..... **368**

"Enforcement Activities Carried Out under Canadian Environmental Protection Act, 1999 during Fiscal Year 2004-2005, Environment Canada, 2005 [1pg]..... **372**